

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 211
FINAL READING
(SECOND)

Introduced by Janssen, 15

Read first time January 7, 2005

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska State Historical Society; to
2 adopt the Nebraska Archaeological Resources Preservation
3 Act; to provide penalties; to create the Statewide
4 Cemetery Registry; to provide powers and duties; and to
5 provide operative dates.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 10 of this act shall be known
2 and may be cited as the Nebraska Archaeological Resources
3 Preservation Act.

4 Sec. 2. The Legislature hereby finds and declares that:

5 (1) Archaeological sites represent an important public
6 resource embodying the record of our state's cultural heritage;

7 (2) The resource base of archaeological sites is being
8 threatened at an increasing rate by agricultural, urban,
9 commercial, transportation, governmental, and industrial
10 development; and

11 (3) The rights of private property owners must be
12 maintained even when their property contains archaeological sites
13 or resources.

14 Sec. 3. For purposes of the Nebraska Archaeological
15 Resources Preservation Act:

16 (1) Archaeological resource means any material object of
17 past human life or activities that is of archaeological interest.
18 Such objects include, but are not limited to, pottery, basketry,
19 bottles, weapons, tools, structures or portions of structures,
20 dwellings, rock paintings, rock carvings, intaglios, graves, human
21 skeletal materials, or any portion or piece of any of such items.
22 Nonfossilized and fossilized paleontological specimens, or any
23 portion or piece thereof, shall not be considered archaeological
24 resources unless found in an archaeological context. No object
25 shall be treated as an archaeological resource under this
26 subdivision unless such object is determined to be at least fifty
27 years of age;

28 (2) Archaeological site means a place or location where

1 archaeological resources are found;

2 (3) Master archaeological site file means the records
3 inventory of all known Nebraska archaeological sites maintained by
4 the Nebraska State Historical Society;

5 (4) National Register of Historic Places means the
6 register of districts, sites, buildings, structures, and objects
7 significant in American history, architecture, archaeology,
8 engineering, and culture, maintained by the Secretary of the
9 Interior under the authority of the federal Historic Sites,
10 Buildings, and Antiquities Act, 16 U.S.C. 462(b), and the National
11 Historic Preservation Act, 16 U.S.C. 470a(a)(1)(A);

12 (5) State agency means any division, department, board,
13 bureau, commission, or agency of the State of Nebraska; and

14 (6) Undertaking means a project, activity, or program
15 funded in whole or in part under the jurisdiction of a state
16 agency.

17 Sec. 4. (1) There is hereby established the State
18 Archaeology Office which shall be a division within the Nebraska
19 State Historical Society. The purpose of the office shall be to
20 coordinate and encourage appropriate archaeological undertakings
21 and to preserve archaeological resources. The State Archaeology
22 Office may adopt and promulgate rules and regulations to carry out
23 the purposes of the Nebraska Archaeological Resources Preservation
24 Act.

25 (2) The State Archaeology Office shall be headed by the
26 State Archaeologist. The State Archaeologist shall be a graduate
27 of a recognized college or university with a graduate degree in
28 archaeology or anthropology and shall have sufficient practical

1 experience and knowledge of archaeology to carry out the purposes
2 of the act.

3 (3) The State Archaeology Office may:

4 (a) Promote development of archaeological resources for
5 educational, cultural, tourism, and scientific purposes;

6 (b) Support popular and avocational interest in
7 archaeological resources through field trips, demonstrations,
8 seminars, and excavations throughout the state;

9 (c) Conduct a program of locating, identifying,
10 quantifying, and assessing the significance of the state's
11 archaeological resources;

12 (d) Maintain the master archaeological site file;

13 (e) Advise state agencies, political subdivisions,
14 nongovernmental organizations, commercial and business interests,
15 private property owners, individuals, and others as to the
16 provisions and requirements of the act;

17 (f) Serve as the liaison office in transactions dealing
18 with archaeological resources between state agencies and between
19 the state and the federal government;

20 (g) Cooperate with state agencies and others in
21 overseeing the execution of undertakings required by the act;

22 (h) Serve as the liaison office between state agencies
23 and Indian tribes, the Commission on Indian Affairs, or other
24 constituent groups culturally affiliated with archaeological sites
25 involved in undertakings;

26 (i) Maintain a list of archaeologists qualified to
27 conduct research projects required by the act;

28 (j) Maintain a permanent repository and electronic data

1 base of published and unpublished sources on the archaeological
2 resources of the state;

3 (k) Prepare, publish, and distribute for professional use
4 and public education reports, bulletins, pamphlets, maps, and other
5 products necessary to achieve the purposes of the act;

6 (l) Implement a program of emergency salvage archaeology,
7 which includes surveys and either salvage or preservation of
8 archaeological resources imperiled by development activities or
9 natural forces;

10 (m) Administer and manage grants, bequests, devises, tax
11 incentives, and easements of property to the state for the purposes
12 of preserving archaeological sites and resources; and

13 (n) Ensure the long-term curation and management of
14 collections and records resulting from undertakings within the
15 state;

16 (o) Identify properties included in the National Register
17 of Historic Places that are endangered, and coordinate or
18 facilitate the purchase and maintenance of such properties by other
19 public or private agencies in order to preserve archeological sites
20 or resources located on the properties; and

21 (p) Conduct all other activities necessary to carry out
22 the purposes of the act.

23 Sec. 5. (1) Except as provided in subsection (2) of this
24 section, the head of any state agency having jurisdiction over a
25 proposed state or state-funded undertaking, which has potential to
26 affect archaeological resources or sites, shall, prior to the
27 approval of the expenditure of any state funds on the undertaking,
28 notify the State Archaeology Office of the undertaking and

1 cooperate with the office to identify and develop measures to
2 mitigate the effect of the undertaking on any archaeological site
3 or resource that is included in or eligible for inclusion in the
4 National Register of Historic Places.

5 (2) The Department of Roads shall be exempt from the
6 provisions of the Nebraska Archaeological Resources Preservation
7 Act as long as a cooperative agreement exists between the
8 Department of Roads and the Nebraska State Historical Society which
9 ensures that all highway construction projects meet federal
10 historic preservation legislation and regulations, and such federal
11 preservation legislation and regulations fulfill or exceed the
12 objectives and standards of the act.

13 (3) Nothing in the Nebraska Archaeological Resources
14 Preservation Act shall be construed to abridge the rights of
15 private property owners and in no case shall a private property
16 owner be required to pay for activities undertaken by the State
17 Archaeology Office.

18 Sec. 6. The State Archaeology Office may accept, use,
19 disburse, and administer all funds or other property, services, and
20 money allotted to it for purposes of the Nebraska Archaeological
21 Resources Preservation Act and may prescribe the conditions under
22 which such funds, property, services, or money will be accepted and
23 administered.

24 Sec. 7. (1) Any person who knowingly and willfully
25 appropriates, excavates, injures, or destroys any archaeological
26 resource on public land without written permission from the State
27 Archaeology Office is guilty of a Class III misdemeanor.

28 (2) When the State Archaeology Office has cause to

1 believe that a person has engaged in or is engaging in any unlawful
2 conduct prescribed in this section, it may apply for and obtain, in
3 an action in the appropriate district court of this state, a
4 temporary restraining order or injunction, or both, pursuant to the
5 Nebraska rules of civil procedure prohibiting such person from
6 continuing such practices, or engaging therein, or doing any act in
7 furtherance thereof.

8 Sec. 8. No person shall enter or attempt to enter upon
9 the lands of another without permission and intentionally
10 appropriate, excavate, injure, or destroy any archaeological
11 resource or any archaeological site. Any person committing such
12 act is guilty of a Class III misdemeanor.

13 Sec. 9. The Nebraska State Historical Society may use
14 General Fund appropriations to match other funds, grants, or money
15 received to carry out the Nebraska Archaeological Resources
16 Preservation Act.

17 Sec. 10. The State Archaeology Cash Fund is hereby
18 created. The fund may be used to carry out the purposes of the
19 Nebraska Archaeological Resources Preservation Act. Any money in
20 the fund available for investment shall be invested by the state
21 investment officer pursuant to the Nebraska Capital Expansion Act
22 and the Nebraska State Funds Investment Act.

23 Sec. 11. (1) The Nebraska State Historical Society shall
24 establish and maintain the Statewide Cemetery Registry. The
25 registry shall be located in the office of the Nebraska State
26 Historical Society and shall be made available to the public. The
27 purpose of the registry is to provide a central data bank of
28 accurate and current information regarding the location of

1 cemeteries, burial grounds, mausoleums, and columbaria in the
2 state.

3 (2)(a) Each city, village, township, county, church,
4 fraternal and benevolent society, cemetery district, cemetery
5 association, mausoleum association, and any other person owning,
6 operating, or maintaining a cemetery, pioneer cemetery, abandoned
7 and neglected cemetery, Indian burial ground, mausoleum, or
8 columbarium shall register with the Statewide Cemetery Registry.

9 (b) Except as provided in subdivision (c) of this
10 subsection, the registration shall include the following:

11 (i) The location or address of the cemetery, burial
12 ground, mausoleum, or columbarium;

13 (ii) A plat of the cemetery, burial ground, mausoleum, or
14 columbarium grounds, including any lots, graves, niches, or crypts,
15 if available;

16 (iii) The name and address of the person or persons
17 representing the entity owning, operating, or maintaining the
18 cemetery, burial ground, mausoleum, or columbarium;

19 (iv) The inception date of the cemetery, burial ground,
20 mausoleum, or columbarium, if available; and

21 (v) If the cemetery, burial ground, mausoleum, or
22 columbarium is abandoned, the abandonment date, if available.

23 (c) The information required in subdivision (b) of this
24 subsection regarding the operation and maintenance of a cemetery,
25 burial ground, mausoleum, or columbarium prior to January 1, 2006,
26 shall be required only if such information is reasonably available
27 to the registering entity.

28 (d) The entity owning, operating, or maintaining the

1 cemetery, burial ground, mausoleum, or columbarium may include
2 information regarding the history of the operation of the cemetery,
3 burial ground, mausoleum, or columbarium.

4 (3) The entity owning, operating, or maintaining a
5 registered cemetery, burial ground, mausoleum, or columbarium shall
6 update its entry in the registry every ten years following the
7 initial registration by the entity.

8 Sec. 12. Section 11 of this act becomes operative on
9 January 1, 2006. The other sections of this act become operative
10 on their effective date.